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No. 87-943

In The
Supreme Court of the United States
October Term, 1987

CITY OF ST. LOUIS,

Petitioner,

vs.

JESSE WOODSON JAMISON,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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TABLE OF CONTENTS

	Page
Table of Authorities	ii
Reasons for Denying the Writ	1
I. The Solicitation Rule Adopted By The City of St. Louis Recognizes the Public Forum Status of Unrestricted Areas of the Airport.	1
II. Airport Director Griggs Exercised Complete and Unguided Discretion In Denying Plaintiff-Respondent's Application to Exercise His First Amendment Rights at the Airport.	2
III. Airport Director Griggs' Attempt to Bar All Persons Who Have A History of Mental Illness From the Airport Is Not A Reasonable Time, Place or Manner Regulation Because It Is Not Content Neutral, Is Overbroad and Overinclusive and Violates Equal Protection of the Laws.	4
Conclusion	5

TABLE OF AUTHORITIES

Page

CASES

Board of Airport Commissioners of the City of Los Angeles v. Jews for Jesus, Inc., 482 U.S. —, 107 S.Ct. 2668 (1987) 3, 4

Grayned v. City of Rockford, 408 U.S. 104 (1972) 2

Perry Education Association v. Perry Local Educators' Association, 460 U.S. 37 (1983) 4

Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969) 5

REASONS FOR DENYING THE WRIT

This Court should deny this Petition for Writ of Certiorari because this case does not present any questions of general importance which should be considered by this Court. The issues presented to the District Court and to the Eighth Circuit in this case are whether the unrestricted areas in the Lambert-St. Louis International Airport are a public forum available for the expression of first amendment rights and whether Plaintiff-Respondent Jamison's request to silently protest was unconstitutionally denied. This issue was effectively decided in Plaintiff-Respondent's favor by the City's adoption of an airport "Solicitation Rule" which designated unrestricted areas of the airport as being held open for first amendment expression. In ruling for the Plaintiff-Respondent, the Eighth Circuit followed precedents established by this Court and held that the unrestricted areas of the airport had been established by the City as a public forum and that the denial of Jamison's request was unconstitutional.

I. The Solicitation Rule Adopted By The City of St. Louis Recognizes the Public Forum Status of Unrestricted Areas of the Airport.

In determining that unrestricted areas of the Lambert-St. Louis International Airport constitute a public forum, the Eighth Circuit cited the Airport's Solicitation Rule, Section 1.05, which states that "any person or organization desiring to engage in activities at Lambert-St. Louis International Airport which involves the exercise of constitutional freedoms . . . shall be protected in such activities. . . ." Appendix, A-25. The rule's stated intent is to "insure that persons seeking to exercise constitutional

freedoms of expression can communicate effectively with users of the Airport." Appendix, A-25.

The Eighth Circuit concluded that the "City's regulations thus implicitly acknowledge that the first amendment activities that take place in more traditional public forums are not incompatible with the purposes of an airport's public concourses." Cf. *Grayned v. City of Rockford,* 408 U.S. 104, 116 (1972). Appendix, A-6. ("crucial question is whether the manner of expression is basically incompatible with the normal activity of a particular place ....")

The Eighth Circuit followed a long line of cases both from the state and federal levels which have unanimously held that an airport is a public forum in which first amendment activities are protected. Appendix, A-6. However, rather than blindly following precedent, the Court relied heavily upon the City's "implicit acknowledgment that the concourse of a large airport facility like the one in St. Louis has the character, pattern of activity, and nature of purpose that makes it an appropriate place for the communication of views." Appendix, A-7.

II. Airport Director Griggs Exercised Complete and Unguided Discretion In Denying Plaintiff-Respondent's Application to Exercise His First Amendment Rights at the Airport.

In light of the public character of the concourses of Lambert-St. Louis International Airport and Solicitation Rule 1.05, which acknowledges the Airport's public forum status, the complete and unguided discretion exercised by the Airport Director in denying Plaintiff-Respondent's application to protest is inconsistent with the preservation

of first amendment rights. Defendants have asserted that Airport Director Griggs' previous refusals to obey the procedures established under Rule 1.05 somehow caused the Rule to be "moribund" at the time of Jamison's request to exercise his first amendment rights. Upon the asserted nullification of the Rule, Defendants argue that Director Griggs acquired general discretion to disallow any activities that, in his opinion, would not be in the best interests of the airport or persons using it. This practice resulted in the denial of all requests for permission to protest or solicit except those mandated by court order.

The Eighth Circuit rejected such practice which:

> makes the peaceful enjoyment of freedom which the Constitution guarantees contingent upon the uncontrolled will of an official—as by requiring a permit or license which may be granted or withheld in the discretion of such official—is an unconstitutional censorship of prior restraint upon the enjoyment of those freedoms.

Appendix, A-8.

In *Board of Commissioners v. Jews for Jesus,* 107 S.Ct. 2568 (1987), decided last term, this Court rejected an airport regulation which purported to prohibit all "non-airport related" speech on the grounds that such regulation would give airport officials the unconstitutional power "to decide in the first instance whether a given act is airport related." *Jews for Jesus, supra,* 107 S.Ct. 2568 at 2573. The exercise of broad discretion by Airport Director Griggs in this case would likewise cause "immeasurable injury" towards Plaintiff-Respondent and all persons who wished to exercise their first amendment freedoms at the airport.

Finally, the Eighth Circuit held that the City's practices were not narrowly tailored to serve compelling governmental purposes. Director Griggs testified that he routinely refused all requests to protest or solicit except those mandated by court order. A rule banning all first amendment activity is clearly overbroad and unconstitutional. *Jews for Jesus, supra,* 107 S.Ct. at 2571.

III. Airport Director Griggs' Attempt to Bar All Persons Who Have A History of Mental Illness From the Airport Is Not A Reasonable Time, Place or Manner Regulation Because It Is Not Content Neutral, Is Overbroad and Overinclusive and Violates Equal Protection of the Laws.

The Eighth Circuit held that the City of St. Louis and its Airport Director failed to demonstrate that a broad exclusion of all persons suffering from some form of mental illness would further the City's interest in security and operational efficiency. Appendix, A-10. In determining that the government may regulate the time, place and manner of expression in public forums, the Eighth Circuit turned to the well-established maxim that such regulations must be "content neutral, narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication." *Perry Education Ass'n, supra,* 460 U.S. at 45. Appendix, A-9.

The Eighth Circuit rejected the City's argument that persons, including Jamison, who have mental illnesses "which increase their propensity for violent or disruptive conduct," can be uniformly deprived of their first amendment rights as being an "overbroad and constitutionally offensive prohibition." Appendix, A-10. After deter-

mining that the evidence did not demonstrate that Jamison, himself, would in fact pose a danger to the public, the Eighth Circuit found support in this Court's language from *Tinker v. Des Moines Indep. Community School Dist.*, 393 U.S. 503, 508 (1969): "[U]ndifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression." Appendix, A-10.

CONCLUSION

For the foregoing reasons, this case does not present any question of general importance which should be considered by this Court, nor does the Eighth Circuit opinion in *Jamison v. City of St. Louis* conflict with holdings among other circuits, and the Petition for a Writ of Certiorari to review the judgment and opinion of the Eighth Circuit should be denied.

Respectfully submitted,

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This brief was prepared with the assistance of William J. Balmer.